

TAB 16

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ESTATE OF PIERRE LOURY,)
Deceased, by Tambrasha)
Hudson, Administrator,)
)
Plaintiff,) No. 16 C 04452
)
vs)
)
CITY OF CHICAGO, Chicago)
Police Officers SEAN HITZ)
(Star No. 6272) and JEFF J.)
RIORDAN (Star No. 7716),)
)
Defendants.)

The discovery deposition of ROGER CLARK, taken in the above-entitled cause before Steven J. Brickey, CSR, State of Illinois, at 30 North LaSalle Street, Chicago, Illinois, on the 27th day of December, A.D., 2017, commencing at 10:10 o'clock a.m.

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1 and it's supported as I stated it the footnote by
2 a number of other companion studies that resonate
3 with their findings.

4 Q. Other than --

5 A. And it -- it involved a very deep
6 review statistically in the very -- in various
7 cases and -- and a number of those are commented
8 on in the report.

9 Q. What is the actual name of the
10 standard that they use?

11 MR. STROTH: Objection. Foundation.

12 BY THE WITNESS:

13 A. I don't remember.

14 BY MR. GREEN:

15 Q. So you don't know?

16 A. I did know and I do not know the
17 term they used as I sit here today.

18 Q. But right now other than it's
19 entitled by the Department of Justice, you don't
20 know what the standard is that they used?

21 A. I do not recall I think is the best
22 way to answer it and I do not contest it.

23 Q. Now, you also relied on the seven
24 conclusions you've listed here of the DOJ report,

1 did you -- is that correct?

2 A. There were five broad categories and
3 they -- I listed them out in that paragraph.

4 Q. All right. But you didn't look at
5 any data yourself that the DOJ looked at in coming
6 to these conclusions, did you?

7 MR. STROTH: Objection. Form.

8 BY THE WITNESS:

9 A. I did not review any independent
10 data other than what they cited and what was cited
11 in the other reports I listed in the footnote.

12 BY MR. GREEN:

13 Q. So you didn't look in any specific
14 facts cited or any specific instances that they
15 were discussing, yourself independently?

16 A. I did not. I was not an independent
17 investigator of the -- of the cases cited.

18 Q. Did you talk to anyone at the DOJ of
19 how they came about with their conclusions?

20 A. No.

21 Q. Would you acknowledge that the
22 Department of Justice, also the report, did
23 recognize that the Chicago Police Department were
24 making attempts at reform historically?

1 A. I noted that.

2 Q. Including body cameras by 2016, is
3 that correct?

4 A. I noted that that's already occurred
5 last time I was here for the other deposition that
6 was announced.

7 Q. Is there any basis to question that
8 the DOJ's findings that there were indeed reform
9 attempts underway by the Chicago Police
10 Department?

11 A. Well, I saw that they cited -- that
12 the City has stated their desire, but that stated
13 desire is there and also I took it as an
14 acknowledgement by the City of this exact thing,
15 this Monell issue, that it did exist and does --
16 and does exist and I took it as -- you know, I did
17 not take the statement that it was being
18 eliminated. I certainly based on the two cases
19 that I've had here with the McIntosh and this that
20 span a year and the problems are there.

21 Q. Now, if you were to do an
22 independent investigation into what you cite here
23 through the Department of Justice investigation,
24 which -- what data would you look at?

1 MR. STROTH: Objection. Foundation.

2 BY THE WITNESS:

3 A. I think I would -- first, you're
4 talking about my approach?

5 BY MR. GREEN:

6 Q. If --

7 A. If I were going to do a statistical
8 review? I think that's been done to the -- to
9 the -- I mean, that's been looked at over and over
10 and over again, at least five times as I've cited
11 in different reports, all with the same
12 conclusion. That's why the report is written as
13 it is. It's there. The City has been on notice.
14 The problem has existed. It continues to exist.
15 It certainly continued to exist to this issue and
16 that's why the report is formatted this way.

17 Q. So it's fair to say you wholly rely
18 on these seven conclusions of the Department of
19 Justice report?

20 MR. STROTH: Objection. That
21 mischaracterizes the expert's testimony thus far.

22 BY THE WITNESS:

23 A. I do not rely wholly, but I
24 certainly can find no problem with those seven at

1 all in any way. There is no outreach on any of
2 those seven.

3 BY MR. GREEN:

4 Q. Now, on page seven I'll ask -- I'll
5 ask it again.

6 If you were to do an independent
7 investigation and not just rely on these
8 conclusions of the Department of Justice, what
9 would you do?

10 MR. STROTH: Objection. It's a
11 hypothetical.

12 MR. SCHOOP: Yes, it is a
13 hypothetical. You're tendering this man as an
14 expert. Experts can and should be expected to
15 answer hypotheticals, counsel. Please answer the
16 question, if you can, sir.

17 MR. STROTH: Same objection.
18 Foundation. You can answer the question if you
19 can, if you understand it.

20 BY THE WITNESS:

21 A. Sure. Chicago is a big department.
22 It would require most likely and which has been
23 done as I understand it by a number of researchers
24 including a staff of the Department of Justice

1 assigned to this project I would probably do it
2 much the same way as the DOJ described their
3 approach because for two reasons.

4 One is they have done this many
5 times throughout the country and it works. In
6 particular, I was very close to the LAPD
7 Department of Justice review and the Inglewood
8 Department of Justice review. So I think it's --
9 I'll use the term bulletproof in terms of fairness
10 and completeness. So I would follow those --
11 those protocols. Now -- and it would have to
12 be -- it would have to occur with the deficiencies
13 acknowledged in the system itself because the
14 data -- I'll wait for -- are you ready?

15 BY MR. GREEN:

16 Q. Mm-hmm.

17 A. The data is -- source is the
18 department itself. One of the problems as stated
19 in this report is if I do not want the question --
20 if I do not want the answer, I will not ask the
21 question and if I do not want to memorialize the
22 problem, I will not keep the data and those are --
23 that's -- those are two hurtles that have to occur
24 which I saw significantly occurred with these

1 reports. So I'll wait for the question, next
2 question.

3 Q. Well, what specifically would you do
4 to come to these conclusions in the way of
5 investigating the data that the Department of
6 Justice had?

7 A. I --

8 Q. What protocols are there that you
9 are referring to?

10 A. Well, I would be -- first, you
11 identify who your sources are, how much of them
12 exist, if at all, what you would need. You would
13 get experts on statistics. You would have workers
14 that would develop a database. Hopefully you
15 would use computers. You would tap into what
16 exists if it exists at all what's called an EWS,
17 early warning system.

18 I would reference you to the
19 Kolts Commission and the Christopher Commission
20 study, which is extensive. Rodney King riot, my
21 last riot, I had a platoon under my command in
22 that riot and the Christopher Commission Report is
23 very good because it -- what he did was able to
24 delve into the personnel files. So it would be --

1 there were 7,000 personnel files by the way in the
2 LAPD.

3 They sorted through every one of
4 them and all of the complaints that existed in the
5 record and identified a certain group of officers
6 that were responsible for the majority of the
7 complaints and they statistically weighed them and
8 then he identified recommendations that this is a
9 springboard for EWS. So I think that approach was
10 good. I think that's typically what -- how the
11 DOJ report starts out, but it's very significant
12 min- -- delving into everything available that can
13 be reviewed and placed in a database.

14 Q. Have you developed your own
15 methodology for reviewing Monell claims?

16 MR. STROTH: Ob- -- that's fine.

17 BY THE WITNESS:

18 A. My own methodology? No, I don't
19 have any particular one other than I don't try to
20 re-plow the ground that's been plowed when it
21 appears valid and as you know you have a rather
22 renown professor that's been involved in this for
23 years, you have the DOJ, you've got other reports.
24 They have all come to the same conclusion. When

1 you see that, then you have a very substantial
2 support of the conclusions and that's what I tried
3 to express in my report.

4 BY MR. GREEN:

5 Q. Now, the details you've described
6 earlier like the Christopher Report methodology,
7 what you believe the DOJ did, you personally did
8 none of that in this particular case, did you?

9 MR. STROTH: Objection. Foundation.

10 BY THE WITNESS:

11 A. I did not do that.

12 BY MR. GREEN:

13 Q. Now, on page 17, you also talk about
14 your fees?

15 A. Page 17?

16 Q. Yes, 17 at the end. You have travel
17 time at the rate of \$50 an hour; travel via
18 automobile to/from San Diego to Los Angeles eight
19 hours \$400; all case review consulting and writing
20 of expert opinions, such as Rule 26 reports, at
21 \$250 per hour; all testimony, either trial or
22 deposition, \$350 an hour with a two-hour minimum
23 required, is that a fair and accurate description
24 of your billing rates in this case?

1 A. It's not accurate in terms of the
2 billing rate for this case. I capped the billing
3 for the case up to today at \$3,500.

4 Q. Is that a flat fee?

5 A. Well, it certainly has exceeded at
6 the rate of \$250 an hour, the \$3,500, but I capped
7 it at that pending if there is a trial and then
8 I'll charge the \$350 and, of course, the travel
9 expenses and so forth will be charged and will be
10 charged during trial time as well.

11 Q. So how many hours and how much have
12 you charged in this case so far to date?

13 A. Well, I've charged \$3,500 and
14 nothing further up to today, plus the airfare,
15 which is right at something like \$1,100 and hotel
16 has been provided, meals have been provided. So
17 just travel back to the airport. That will be it
18 until and if there is a trial, then there will be
19 travel again and \$350 for the time on the stand
20 and, of course, the deposition time here typically
21 under the Federal Rules would fall on the City,
22 but I understand they're taking care of it. So it
23 would be the \$350 for the hours here.

24 Q. Now, if there is a result in favor

1 of plaintiff at the trial, do you expect to charge
2 for all those extra hours that you were not paid
3 for yet?

4 A. No, it's -- I would be -- regardless
5 of the outcome, my time on the stand I will charge
6 for. Other than that, no.

7 Q. So have you been paid the \$3,500?

8 A. Yes.

9 Q. And just curious, what percentage of
10 your income presently is derived from your expert
11 witness work?

12 A. It would be right at two-thirds of
13 my income and the other third is my retirement.

14 Q. That's your pension from the
15 sheriff's office?

16 A. Yes.

17 Q. And, Mr. Clark, did you actually
18 write each portion of this report that has been
19 marked Exhibit 4 or were there certain portions
20 that were prewritten that you reviewed and
21 approved?

22 A. There were some that were prewritten
23 that I approved.

24 Q. And, if so, which -- which portions

1 were prewritten and by whom?

2 A. Oh, my goodness. Well, they -- I
3 think the best way to say this, collaborative with
4 Mr. Odim. Nothing from Mr. Stroth.

5 Q. Mr. Odim, you're talking about your
6 counsel with you today?

7 A. Yeah. Well, he's my client. He is
8 not representing me, but he is representing the
9 plaintiff. Plaintiff's counsel. So let me see.
10 I vetted with him the listing of material
11 reviewed, the overview of events. Actually, I
12 took out of statements you see there is heavy in
13 quotes. Mr. Odim pointed me to IPRA statements,
14 which I plugged in. And then it was -- you see
15 some similarities with McIntosh on opinions and
16 then -- and then my qualifications, as I said,
17 always appears in my reports.

18 Q. Now, when you say similarities,
19 they're, in fact, virtually identical to the Lane
20 opinions, the last list of opinions in that case,
21 is that correct?

22 MR. ODIM: Objection.

23 BY THE WITNESS:

24 A. They're -- they're not exact and

1 they're not -- but I think the paragraph, the
2 Department of Justice investigation is I think
3 almost word for word because it's accurate.

4 BY MR. GREEN:

5 Q. And they -- they were drafted by
6 Mr. Odum for you?

7 A. No.

8 MR. STROTH: Objection.

9 BY THE WITNESS:

10 A. No, it was collaborative. And we --
11 we worked together on it. He made suggestions and
12 then the opinions was closely collaborative. The
13 footnote is his that he provided to me.

14 BY MR. GREEN:

15 Q. Now, is this -- that's -- one last
16 note on this -- on the bottom here.

17 MR. STROTH: Of what page?

18 MR. GREEN: Of page eight of 17.

19 MR. STROTH: Mm-hmm.

20 BY MR. GREEN:

21 Q. This is the ultimate report about
22 failures of the Chicago Police Department's
23 pattern and practice, what -- what footnote --
24 where is that referring to?

1 orders or even state law?

2 A. Because the general orders require
3 an investigation and the investigation doesn't
4 meet the requirement.

5 Q. And the City of Chicago also has an
6 independent citizen review authority. They're now
7 called the independence Civilian Office of Police
8 Accountability, correct?

9 A. Yes.

10 Q. What about other large cities like
11 New York or Los Angeles, they don't have full-time
12 civilian investigative bodies, do they?

13 A. They have policies and procedures,
14 some of which are wanting, and others that are
15 good. I can give you some examples.

16 Q. But they don't have an independent
17 review authority like Chicago, do they?

18 A. The City of Los Angeles has a police
19 commission that serves as an independent authority
20 and New York has a very fine policy established by
21 Bratton when he was the commissioner and it's
22 generally well done.

23 Q. Again, this opinion three in the
24 Lane case, that covered the period 2009 to 2015,

1 has there been anything to change your opinion in
2 this case in regard to the time period here from
3 2010 to 2016?

4 A. No.

5 Q. Opinion four. You say "These
6 failures impede the conduct of complete, fair and
7 unbiased investigations of police misconduct and
8 lead to foreseeable risk of harm to others and are
9 things that a reasonable Chicago policymaker would
10 be aware of."

11 What is the factual basis to
12 support that it impedes the conduct of complete,
13 fair and unbiased investigations, these failures?

14 A. What occurred here in this case, and
15 I cited them, and I could give you a better
16 example I think in particular to this case and --

17 Q. I'm sorry. Is that referring to
18 those first four elements you -- you cited
19 regarding the investigation?

20 A. No, the entirety of the report. I
21 know we're going through it step-by-step, but the
22 entirety of the report is reflective to that and
23 so it was never intended for these to be totally
24 standalone statements and the -- there was another

1 part -- answer to your question.

2 And the impairments as I already
3 stated and I started to give you an example of the
4 mother who comes in to complain about the beating
5 of her son and they require the affidavit are --
6 are known to be clear impairments to any police
7 administrator and how they ever crept their way
8 into Illinois's law I think is -- is interesting,
9 would be an interesting historical review.

10 Q. That is the law nonetheless?

11 A. It is the law and I think as stated
12 by the Department of Justice commentary in their
13 report that there are a number of things that
14 somehow become part of the agreement between the
15 police league and the City, et cetera, that now
16 stand in the way of a -- of a good investigative
17 process in police involved shootings.

18 Q. And you're -- you're referring to
19 the Collective Bargaining Agreement?

20 A. Yes, I think that probably -- as
21 stated by the Department of Justice that there are
22 some real problems with that and that that
23 authority or that ability to make a policy needs
24 to be restored back into the City.

1 Q. So your opinions in this regard are
2 totally based upon what you read in the DOJ
3 report?

4 A. The DOJ report and the other -- can
5 we agree that when I say DOJ all of the
6 foundational articles and reports that -- that
7 agree one way or another with the findings that I
8 cited in my report?

9 Q. Your --

10 A. The collective --

11 Q. The 48 items and the DOJ report
12 conclusions?

13 A. Right, which I think are a very
14 excellent recount of what the problems are.

15 Q. What is your factual basis as they
16 lead to foreseeable risk of harm to others?

17 A. Because when a person gets the
18 notion that they can act with impunity, then harm
19 follows. Ergo, the differences between the NORSAT
20 and the SIS unit, the LAPD SIS unit is a good
21 example.

22 Q. Do you have any training in
23 psychology?

24 A. I'm the father of ten children.